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ABSTRACT

A school administrator plays many roles in the course of his work, and his legal rights and responsibilities vary considerably depending on the particular role he is playing. Actions that might be considered legal or even desirable in one context might make an administrator liable to litigation in another context. A court's perception of the role an administrator is playing at a given moment often makes a crucial difference. A school administrator at various times plays such roles as school district employee, director of personnel, executive assistant to the school board, school business manager, and protector of students' rights. Because each of these roles is generally covered by a well-settled body of law, it is well worth an administrator's effort to study each of those roles and its applicable legal standards. By doing so, an administrator may avoid inadvertantly depriving someone of his civil rights and may also avoid the embarassment and expense of unnecessary litigation. (JG)

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THE LEGAL STATUS OF SCHOOL ADMINISTRATORS:

RIGHTS AND RESPONSIBILITIES

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M. Chester Nolte

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THE LEGAL STATUS OF SCHOOL ADMINISTRATORS: RIGHTS AND RESPONSIBILITIES

M. Chester Nolte*

William Shakespeare wrote that "All the world's a stage, And all the men and women merely players. They have their exits and their entrances; And one man in his time plays many parts, . . ."[1] He then went on to outline the seven ages of man from infancy to senility, "sans teeth, sans eyes, sans taste, sans everything." We can borrow a page from the Bard Today in looking at the legal status of administrators. For it is as inescapable now as then that one's legal status relates to his "personhood," which in turn depends largely upon what role he is playing at the moment. The knowledgeable observer, watching the administrator upon the educational stage, is able at once not only to perceive the particular frame of reference in which the administrator moves, but also, whether the acts are consistent with the role which he is playing at the moment. From this analysis, you can predict the probably attitude of the courts in dealing with whether the performance of the school administrator has legal validity, and whether that administrator plays the role as the courts have perceived it to be at the moment. Because these roles are far more standardized than one might imagine, a certain amount of security and predictability emerge to help administrators keep consistently within those roles which they, and society as well, have come to expect from persons who serve as school administrators in this country. In brief, by studying the roles themselves, and what is well-settled law for those roles, one can visualize what might be

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[1]As You Like It, Act II, Sc. 7, Line 139.

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decided were that administrator's actions scrutinized in court. Since these roles are quite numerous, a familiarity with each of them is helpful to avoid unnecessary litigation, and, what is far more important, to avoid the assessment of personal damages against the administrator who inadvertently or otherwise deprives someone of his/her civil rights. An illustration will serve.

Roles Administrators Play

You are familiar no doubt with the role teachers and administrators play in loco parentis--in place of the parent. The standard of care postulated for a person standing in loco parentis is that behavior which the normal, prudent parent would display under the same or similar circumstances, usually a matter of fact for the jury. The normal, prudent parent seeks to protect his offspring, to aid and strengthen him through careful guidance, and when he is in danger, to see that there is someone to whom he can turn for counsel. That same role is the norm for the administrator,--that he would, in effect be a child advocate,"one who would safeguard the child's rights against inroads by the government, other students, or gross outsiders." Yet many administrators see their roles, not as protection of the recalcitrant scholar, but rather, their commitment to the state to ferret out and bring to justice those miscreants who break the rules. What the courts are saying these days is that these two roles are incompatible--that one cannot be at the same time, a child advocate, attuned to protect the child's rights, and simultaneously an agent of the state, bent upon collecting evidence to use against the child. Thus, the principal who, for example, searches lockers without a warrant, may find that when the scene shifts to private automobiles in the parking lot, he has stepped outside the

protection of in loco parentis. Autos are private property. The courts are saying that he must obtain a warrant to search the automobile, much as a police officer would under the same circumstances. You can see that standing in loco parentis, a protective and supportive role to the child, is contrary to the role played by an investigator bent upon collecting evidence against the child. The courts would look at the roles involved to decide the legality of the principal's actions. So it is important to your success that you remain consistently within the in loco parentis role if you are to reap the benefits of that role. By stepping outside the protections accorded you in that role, you subject yourself not only to censure by the court, but also may become financially liable as well, under the Civil Rights Act of 1871. (42 U.S.C. 1983). We will look at that distinction a bit later.

In examining the roles administrators play, I am not referring for example to those high-sounding titles we read about in the educational literature, "social engineer," "educational statesman," or "the leadership role," to name a few. Nor am I referring to the roles of the planner, organizer, coordinator, or expediter, important as those roles may be. The legally definable roles emerge rather as employee, director of personnel, executive officer to the board, communicator, business manager, or protector of the civil rights of students, to name a few. Time does not permit us to discuss at length all these roles today, I will confine my remarks to a handful of those roles which are causing the most litigation at the present time. I plan to do this by illustrating the points of law in actual cases, some of which are not only interesting, but pertinent to every administrator facing those recently freed groups, students and teachers. There is no shortage of cases illustrating these roles, so I have sifted through them for the most interesting cases as to the novelty of the relief

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sought or the set of facts in each case. Let us begin by looking at the school administrator in terms of his/her role as an EMPLOYEE of the board of education.

The Employee Role

It is self-evident that one must qualify scholastically and through license and experience to become an employee of the school district and wear the hat marked "School Administrator." While licensing and contracting were once fruitful areas of litigation, they do not now command that prominence on the legal scene. Out of these cases came well-settled principles of law: (1) that one does not have a right to demand employment by the state; (2) that one cannot be demoted without just cause; and (3) that one is entitled to his day in court when being deprived of life, liberty or property. It is the finer details under these principles which tend to cause the headaches. One of the finer distinctions is that administrators, as management, now sit on the side of the table across from the teachers' bargaining representative, and do not presume, as we once did, to represent teachers to the board, and the board to teachers, a real conflict of roles to be sure. In that respect, the role of management representative is much more clearly defined, although there still remain problems of unit memberships, peer-to-peer relationships, and the lack of representation before the board of principals' units, for example, which were unthought of not more than a short decade ago on the educational scene.

Performance contracting. The "in" thing these days is to measure the administrator's performance using some sort of rating scale, similar to the one in the City of Trenton, New Jersey. There the board, using such a performance scale, rated its non-tenured superintendent with 5 A's, 24 B's, 18 C's, 59 D's, and 38 F's. A clause in the contract provided that "the

superintendent agrees to submit annually to an appropriate evaluation by the Board of his performance hereunder." What the superintendent objected to was the board's evaluation, claiming that since some of the low marks he received were under the general heading of "morals", he should have been afforded an opportunity to appear before the board and counter the evidence, if any, which the board used in reaching its conclusions. Quoting with approval the Roth[2] decision, the New Jersey Commissioner of Education upheld the superintendent's claim, quoting the now familiar words that "where a person's good name, reputation, honor, or integrity are at stake, because of what the government is doing to him, notice and an opportunity to be heard are essential."

Further, the Commissioner held that the evaluative document employed, and the judgments made thereunder, were a nullity in the circumstances, and accordingly, he directed the board to remove the document from its records, and to cleanse the superintendent's file of any reference to the various ratings which the administrator had received.[3]

In 1973, a jury in Alaska in addition to giving him the balance due him as regular salary, awarded a superintendant, who was dismissed during the term of his contract, emotional and punitive damages. The amount, some $95,800, is the largest damage suit won by a school administrator in my recollection.[4]

Apparently, one should try to get along with others. In Alabama, a court upheld the board's refusal to re-hire a non-tenured principal not

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[2]Board of Regents v. Roth, 92 S.Ct. 2701 (Wis. 1972), at page 2708.
[3]Flores v. Bd. of Educ. of City of Trenton, Comm. of Educ. Decision, March 13,1974
[4]Davis v. Skagway City School Board, Superior Crt, Juneau Dist. No. 71-352, Oct. 3, 1973.

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because he was incompetent in his work, but because the evidence showed that he totally failed to get along with his fellow employees, students, and other citizens in the local community.[5]

Supervising Instruction

The second role of the school administrator is that of improving instruction. It is not unusual these days to have the teachers' association or union pass a vote of no confidence, and in some instances even circulate petitions for the administrator's removal. When the board takes heed of these accusations, however, it must remove an administrator only upon the full preponderance of the evidence, and not upon opinions. In Minnesota, for example, a court reversed the board's dismissal action where the evidence established that there was a conflict of personalities between the superintendent and some of the teachers. By not giving the administrator due process of law, the charges could not be rebutted, even though without the hearing, the charges were not serious enough to destroy him in his profession.[6] In a similar case in the same state, the court said that the board had become the prosecutor, judge and jury in a dismissal situation, and was too biased by the pressures from teachers and community leaders to be impartial in its deliberations.[7]

In improving instruction, the principal must obey the constitution. In New Jersey, a court ruled that failure to abide by the law making Bible reading unconstitutional "will result in teachers, principals, and superintendents actually violating their oaths of allegiance to the United States Constitution given pursuant to the laws of this state."[8]

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[5]Whatley v. Price, 368 F.Supp. 336 (Ala. 1973).

[6]Potter v. Ind.Sch.Dist. No. 507, Irvine, J., Sept. 30, 1971.

[7]Rimestad v. Ind.Sch.Dist. No. 697 of Eveleth, Anderson, J., May 24, 1973.

[8]Sills v. Bd. of Education, 200 A.2d 817 (N.J. 1965).

How far can the principal go in upgrading instruction? Principals have been upheld in insisting that teachers file lesson plans and take attendance.[9] However, this power is not unlimited. When teachers in Rochester, New York boycotted classes in protest against a board plan to integrate the schools, the superintendent fined the teachers two days' pay and put them on probation for one year. In court, the judge held that such a fact situation did not give rise to a class action. Since each teacher had a different reason for being absent from school, any teacher seeking to challenge the penalties must file a separate and individual suit in order to recover the lost salary.[10]

Administrators are limited in the extent to which they may take independent action without board approval. In Washington, the supreme court of that state ruled that the power to discharge, place on probation, or otherwise punish teachers is granted exclusively to the school board, and is not to be grossly delegated to the discretion of the superintendent alone. A policy of a board giving the superintendent the right to decide whether a teacher should get a salary raise was declared null and void as depriving teachers of due process of law.[11] Where board and superintendent work very closely together, a different result may be expected. In Colorado, the supreme court allowed the superintendent to terminate a teacher during the life of his contract where his action was ratified soon thereafter by the board of education.[12]

In Arizona, a tenured teacher was illegally terminated, whereupon he secured a court order of reinstatement. After the writ was issued, the

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[9]Worley v. Allen, 212 N.Y.S.2d 263 (1961).
[10]Sudore v. Bd. of Education, Sup. Ct., Monroe Co., Feb. 12, 1970.
[11]Noe v. Edmonds School District, 515 P.2d 977 (Wash. 1973).
[12]Snider v. Kit Carson School Dist., 442 P.2d 429 (Colo. 1969).

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superintendent refused to offer the teacher a contract because his elementary certificate had expired, instead assigning the teacher to other duties. In court, the judge held that the actions of the superintendent were inexcusably intentional and willful, and held the superintendent in contempt of court for dragging his feet.[13]

May the administration require a physical examination of teachers and other school personnel in the absence of a showing that such a requirement is arbitrary, capricious or unreasonable?[14] In several cases recently, where the rationale is based on the rights of children, such a requirement has been upheld by the courts. The same rule holds for internal transfer of personnel[15] even though a teacher is competent and efficient in his or her assignment. In fact, one court was moved to say that, under proper school management procedures, good teachers might be needed in another position than the one in which they were currently serving. If the board could show that children were being served more adequately through transfer of good teachers, the court will not interfere. The mere fact of transfer does not in and of itself amount to a finding of misconduct, unfitness, or anything else reflecting unfavorably upon the teacher who is transferred. There is a prior presumption that public officials are actuated by proper motives in the performance of their duties, and unless the teacher can show otherwise, the transfers will be allowed.

Some states have statutes which permit demotions of principals back to the classroom without a hearing on the merits. Such statutes are not unconstitutional, and you should check your state's school code to determine your rights under the transfer rules laid down by your legislature.

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[13]Buck v. Myers, 514 P.2d 742 (Ariz. 1973).

[14]Kropf v. Bd. of Education, 228 N.Y.S.2d 62 (N.Y. 1962).

[15]State ex rel. Withers v. Bd. of Education, 172 S.E.2d 796 (W.Va. 1970).

Administrators and Collective Bargaining

A third role of the school administrator is that of a negotiator. Most of the negotiations involving administrators arising in this area involve questions of unit determination, membership in units, and good faith actions on the part of the negotiating parties. In passing, it seems fair to point out that at present at least, principals' groups are at a disadvantage, because teachers have pre-empted the field, and because the boards in general have not seen the necessity of recognizing principals' groups for bargaining purposes. The case can be made, however, for full recognition of principal-administrator groups by the board of education. The National Education Association is currently sponsoring pilot projects in two states to offer free legal services to teachers on an insurance basis, just another indication of the need for principals to organize and bargain with boards of education. In Maine and Michigan, the NEA pilot project has the state bar associations picking up 40% of the tab, while the state and national associations pay the remainder. We used to say that if you can't beat em, join em. It remains to be seen whether, if you can't beat em at their own game, whether you instead can en-join em!

In Kentucky, a teacher and three principals were demoted for support of a teachers' strike which was later ruled unlawful. A federal district judge found that the action of the board was in violation of their right to free speech, and that merely supporting the strike was not such conduct "as warrants the right of a board to dismiss or demote these educators."[16]

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[16]Dause v. Bates, 369 F.Supp. 139 (Ky. 1973).

Administrators as Business Managers

The fourth role of the school administrator is that of school business manager. Because of the amounts involved, and the desire of people to hold their public servants accountable, considerable litigation arises in this area. In Arkansas, a school board authorized its superintendent to sign all federal forms necessary to obtaining federal grants for the district, although it did not go so far as to authorize him to enter into purchase agreements for books, which he did. He signed a contract for a large quantity of books, thinking that it would be ratified later on by the board, but the board declined. Nevertheless, the books were delivered and put into use in the district. The board refused to pay the charges of $28,315.09, and wrote the company to either come get the books, or settle for a lower figure. The company took the district to court.[17]

The court could not rule that a valid contract existed, because the superintendent's actions in signing the contract had not been ratified by the board. However, since the books had been used and had been beneficial to the district, the court held that an implied contract had arisen that required the district to pay under the theory of quantum meruit (to the value thereof). The seller was entitled to recover the sum of $13,500 in full settlment of the account, or come get the books. A superintendent cannot purchase materials or books without the express consent of the board. To his chagrin, the superintendent found that, despite his contention that "federal funds are free," he had stepped outside the protection of his delegated powers, and might have anticipated that the board would not ratify

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[17]Responsive Environments Corp. v. Pulaski Co.Special Schl. Dist., 366 F.Supp. 241 (Ark. 1973).

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the purchase under a grant of power which authorized him "to sign all federal forms" for the district.

Administrator as Communicator:

The fifth role an administrator plays is that of a communicator. In line of duty, administrators often are called upon to pass along information on teachers, pupils, employees, and other administrators. Ordinarily, so long as they act in good faith in the line of duty and without malice, they may not be liable in damages. For example, the principal who reported to his superintendent that a certain teacher slept in class, failed to make good use of instructional materials, lacked ambition, and should have chosen another career than education was protected from libel because while acting in the line of duty he was covered by "qualified privilege."[18]

Sometimes a mere "Thank you" has legal importance. A school board in Colorado offered an incumbent superintendent a contract for the following year, and he thanked the board for its consideration. Later, the board sought to change its mind, claiming that since it had not entered into a written contract for his services, the superintendent was not legally employed. However, the supreme court of Colorado held that the superintendent's "thank you" amounted to an acceptance of a valid offer of employment, and ordered the board to pay him the full year's salary.[19]

In Maryland, a weekly newspaper offered its readers an unusual service: a rating of all 22 of the county's high school principals. Eight principals earned "Outstanding" marks, 8 were termed "Good", four were judged "Poor",

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18 Johnson v. Gray, 139 S.E.2d 551 (N.C. 1965).

19 Mohler v. Park County Sch.Dist., 515 P.2d 112 (Colo. 1973).

and two luckless principals were rated "Unsuited." One of these latter brought an action for damages against the newspaper. Holding that the medium had impugned the reputation of the principal, the newspaper was ordered to pay damages in the amount of $356,000 as a warning to other news media who might try the same thing. It is interesting to note here that, although the principal is a public figure, and public figures ordinarily do not enjoy blanket protection against libel and slander, the principal does have a measure of protection where his liberty to go elsewhere has been hampered by stories which the media broadcast about him.[20]

A superintendent in New York state was dismissed by his board. He brought an action against the board claiming he was libeled by what the board entered in its minutes--that "his presence is detrimental to the best interests of the children of the district." The court held that such communications by the board were privileged, performed in the line of duty, in good faith, and without malice, and in the best interests of the children of the district and that the superintendent could not recover.[21]

School administrators may, however, collect damages where the board's actions infringe upon freedom of speech under the First Amendment. In a case where an embarrassing memorandum was somehow made public, the board voted to dismiss its administrator, and he sought relief in federal court, which ruled that a person is deprived of his property if the government extinguishes his legitimate claim of entitlement to his job. for exercising his right of freedom of speech.[22]

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[20]TIME, December 24, 1973.
[21]Smith v. Helbraun, 251 N.Y.S.2d 533 (1965).
[22]Hostrop v. Junior College Board, 471 F.2d 488 (Ill. 1972).

Administrator as Protector of the Rights of Students

The final role of the school administrator is that of child advocate, the role which at present is causing the most trouble. The difficulties with this role arise out of the in loco parentis concept, which is a legal fiction intented by the courts. Where the administraror remains safely within this role, a protection arises which permits him to search lockers, administer corporal punishment, and otherwise do that which the normal, prudent parent would do in similar circumstances. The problem is to avoid the appearnance of playing a second role, that of the state agent bent on gathering evidence to be used against the student in disciplinary cases. A look at the cases will help to clarify this problem.

In Arizona, a principal stipulated that graduation dresses for the eighth graders should be of plain pastel colors. However, a girl whose family was experiencing financial difficulties asked if she might be permitted to wear a dress having a flowered pattern. The principal refused, and the girl did not attend the ceremony. When she brought a suit against the principal for deprivation of her constitutional rights, the principal in an out of court settlement had to pay her $1,500 in damages.[23] You may remember that the Civil Rights Act of 1871 (42 U.S.C. § 1983) stipulates that any "person" who deprives another of his civil rights is answerable to that person in damages or other suitable relief. Since the United States Supreme Court has dealt with students' rights in two recent cases, it seems pertinent to close with a look at the points of law developed there in January and February of 1975.

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[23]Story by Associated Press, Tucson, Arizona, Nov. 10, 1974.

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Goss v. Lopez. In February, 1971 several students in Columbus, Ohio were suspended for up to 10 days under a statute which allowed school officials the right to suspend them without a hearing. In a 5-4 decision, the majority held that a student is entitled to "discuss" the reasons for his suspension with school officials and tell his side of the story. Exceptions were made where the student's presence in the school is a threat to the health, safety or welfare of the other students, or is a substantial disruption to the school's program. In declaring the Ohio statute unconstitutional, the Court held that students facing suspension have "property and liberty interests that qualify for protection under the Due Process Clause of the 14th Amendment." In addition, a student also enjoys a constitutional protection against "arbitrary deprivation of liberty as well as a reputation which can be jeopardized" when a school "unilaterally and without due process" labels a child with charges of misconduct which could later interfere with his educational and employment opportunities."[24]

A public education is not a constitutional right, said the majority opinion written by Mr. Justice White. "But having chosen to extend the right to an education to people. . .Ohio may not withdraw that right on grounds of misconduct absent fundamentally fair procedures."

Wood v. Strickland. On February 25, the Court handed down by the same rollcall vote (5-4) the companion case to Lopez, but going much further in its impact on the rights of administrators. Ignorance is no excuse if a school official violates a student's civil rights, no matter how good the official's intentions are, said the Court. Three sophomore girls had been suspended for three months for spiking the punch at a school function. Again, Mr. Justice

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[24]Goss v. Lopez, _____U.S._____, Jan. 22, 1975.

White spoke for the majority, using in part these words:

> School officials do not have absolute immunity against damages for their wrongful acts. . . .The official must himself be acting sincerely and with a belief that he is doing right, but an act violating a student's constitutional rights can be no more justified by ignorance or disregard of settled, indisputable law on the part of one entrusted with supervision of students' daily lives than by the presence of actual malice. A school board member . . .must be held to a standard of conduct based not only on permissible intentions, but also on knowledge of the basic, unquestioned constitutional rights of his charges. . . .Any lesser standard would deny the promise of § 1983. We hold that the school board member is not immune if he knew or reasonably should have known that the action he took would deprive the student of his constitutional rights, or if he took the action with the malicious intention to cause a deprivation of rights. A compensatory award will be appropriate only if the school board member has acted with such an impermissible motivation or with such disregard of the student's clearly established constitutional rights that his action cannot reasonably be characterized as being in good faith.[25]

The minority opinion, written by Mr. Justice Powell, showed concern that well-qualified persons could not be found to serve on school boards were they to be held liable for their wrongful acts, even though unintentional. In the light of the existence of indemnity insurance, this argument lacks the conviction that it might have carried back in 1970 when such insurance was unobtainable.

Summary

Whether the administrator acts legally is determined by his "personhood," his role that he is playing at the moment. Where this role seems to be consistent, and in good faith, lacking malice, the administrator will not be held liable. But the Supreme Court is clearly saying that school board members and administrators are expected to know what the student's rights are under the Constitution, and avoid depriving him/her of those rights

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[25]Wood v. Strickland, _____U.S._____, February 25, 1975.

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under penalty of possible personal loss under the Civil Rights Act of 1871. Since the student may selectively choose from among his tormenters those which he will sue and those he will let slip through the net, it behooves school administrators to acquaint themselves with the latest cases on students' rights, and govern themselves accordingly.

Let me close with a story to illustrate. In Kentucky, a superintendent was removed from his position because he had engaged in an effort to get certain individuals elected to the local board of education. He sought to recover his job in a court of law. The judge, however, while upholding his right to be politically active so long as he was on the winning side, and did not slight his office, did say that realistically the political arena is fraught with dangers for the novice administrator. "If he loses," wrote the court, "his record of performance in office had better be above reproach, because the winners also are human, and will scrutinize his armor for an Achilles heel."

Ah, what a price the school administrator pays for the right to exercise a constitutional right!

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